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U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:

**Request for Postponement or
Waiver of Payments Due the
Commission**

TO: The Commission

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PP Docket No. 93-253

PETITION FOR SPECIAL AND EXTRAORDINARY RELIEF

MKS Interactive, Inc. ("MKS"), by its attorney and pursuant to Section 1.2104(I) of the Commission's Rules, requests special and extraordinary relief from the revised Installment Plan Schedule which was dated December 20, 1995 and in general for a postponement or total waiver of any and all payments of principal or interest due for spectrum purchased at the Interactive Video Data Service ("IVDS") auction. Due to the facts which were clearly unknown by the bidders and the FCC prior to and at all times since the auction, MKS and all other winning bidders (the "Licensees") who have made the initial down payments to the FCC, have been damaged, irreparably harmed and will continue to suffer irreparable harm unless the Commission acts fairly and equitably to grant the relief prayed for herein. The petitioner is without an adequate remedy at law.

Noted by Clerk 10/10/95
LIST AS ONE

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I. TV Answer, Inc. (Now EON Corp.) filed a Petition for Rule-Making with the FCC seeking the allocation of radio spectrum to operate a “so called” Interactive Video and Data Service. The filing was originally made on December 7, 1987, and was supplemented from time to time.

II. The FCC adopted rules authorizing the IVDS service on February 13, 1992, however, no fully operational and commercial trials were conducted by TV Answer or any other proponent of the frequency use as had been done in FM, Cellular, Paging , PCS and others. In short, while the proponents of the frequency use asserted the commercial viability of the IVDS system as proposed, there was no fully commercial system ever put in operation so as to fully and completely demonstrate the capabilities, commercial viability, equipment availability and public acceptance of the proposed frequency use and establish uniform technical standards.

III. The auction was concluded in July 1994 with MKS and probably all other Licensees believing that a proven, uniform and commercially viable IVDS system would be immediately available for them to purchase in order to begin commercial service to the public as soon as possible after license grant.

IV. Following the July 1994 auction, TV Answer and at least one other system supplier, touted their respective systems and each “projected” system costs, “projected” equipment delivery dates and “projected” commercial viability. To date, over eighteen months after the auction, there are absolutely no commercially viable systems in operation! Commercial viability for the purposes of this Emergency Petition, is being defined as a

constructed and operational IVDS system which is providing service to the public on a broad base, which service is being purchased and paid for by members of the public in an arm's length transaction. No such systems exist today and equipment is not readily available for purchase in commercial quantities at reasonable prices.

V. Notwithstanding the state of IVDS developments currently underway by several companies, and the waiver requests pending before the FCC, fairness requires that a Licensee not be required to pay for a license which is presently unusable.

VI. The Licensees cannot be the ones held responsible for their current plight. MKS, and many others were attracted to the IVDS Auction by advertisements placed in the Wall Street Journal by the FCC. MKS entered the auction believing that the FCC had, after five years of deliberation and presumed testing, set aside frequencies capable of commercial exploitation. MKS further believed that since the FCC had type accepted the TV Answer equipment, total systems were readily available for purchase and installation. MKS further believed that TV Answer was ready, willing and able to deliver commercially ready systems for use by the public. It turns out that the TV Answer system was not ready and commercially available in July 1994 and its not commercially available today. The IVDS Auction is therefore, a non-starter, a sham and should, in all fairness, be reversed for all those licensees wishing to do so. The simple fact is that the FCC has touted and sold IVDS licenses to the public which were not commercially viable at the time of the initial sale and are still not viable. To think that the U.S. government would require its citizens to continue paying for a presently commercially useless set of licenses is unconscionable.

VII. As of the date of this Petition, most Licensees have paid twenty percent (20%) of the amount bid and have nothing to show for their investment except losses which, unless the FCC acts to correct this travesty, will continue indefinitely. Many Licensees are faced with potential insolvency, bankruptcy or default by virtue of the Commission's insistence that the Licensees resume payment of interest. Investment bankers, venture capitalists and commercial banks recently contacted by MKS are unwilling to lend or invest any money without satisfactory proof of commercial viability and product acceptance.

VIII. MKS and indeed, most licensees, mistakenly believed that the IVDS system was commercially viable at the time of the auction. The FCC endorsed the plan, sold the licenses and granted type acceptance to the TV Answer system. The public has the right to rely that the FCC would not offer and sell something to the public that was useless.

IX. Prior to and following the auction, TV Answer publicly stated everything that an equipment/system marketing company would be expected of stating to prospective customers in hopes of making a sale. Was it just puffery? Was it fraud? That is not important now, some eighteen months after the auction and thirty days from a declaration of default for nonpayment. The TV Answer system does not work now and it never was commercially viable or available despite claims to the contrary.

Wherefore, considering the foregoing facts, MKS requests the Commission to:

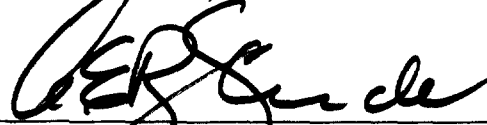
I. Issue an immediate order directing that all payments due the FCC be indefinitely suspended and postponed until twelve months (or a reasonable time) following the completion of all of the following items:

- [a] Suspend payments until there are at least two system vendors which offer type accepted equipment which are readily available in commercial quantities;
- [b] Require system vendors to conduct "real world" commercial tests in order to firmly establish the commercial viability, use and consumer acceptance of their proposed IVDS product or system for a sufficient time [i.e. six months], so as to establish the commercial viability of the proposed system(s);
- [c] Modify the rules to: eliminate duty cycle restrictions; eliminate restrictions on frequency use and mobility; eliminate restrictions relating to combining licenses under a single operation in the same market; and eliminate the current procedure relative to Channel 13 notices and simply require co-operation among IVDS and Channel 13 license holders; and
- [d] Refrain from conducting any further IVDS Auctions until the commercial viability issue is resolved in favor of offering service to the public and serving the public interest.

II. Issue an immediate order to all licensees [in good standing] allowing them to cancel the license(s) purchased at the auction and; receive the return of all funds paid to date; and return the licenses back to the FCC.

Respectfully submitted,

MKS Interactive, Inc.



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